IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPEAL NO.63 OF 1994

Raju Sandipan Sathe
Age-22 yrs. Occ-Service
R/o Rajaram Bahirat Chawl,
Bahiratwadi, Chaturshringi,
Pune-411016. ..Appellant
(Org.Accused)

Vs.

The State of Maharashtra ..Respondent

Appellant and Advocate for the appellant absent.
Mr. B.H. Mehta, APP for Respondent-State.

CORAM : S.S. PARKAR & S.R. SATHE, JJ.
Date : October 15, 2004.

ORAL JUDGMENT (PER S.S. PARKAR,J.) :

1. This appeal is filed challenging the Judgment and Order dated 15/12/1993 delivered by the Additional Sessions Judge, Pune convicting the appellant for the offence under Section 302 of IPC and sentencing him to RI for life and to pay a fine of Rs.500/- in default RI for one month and also convicting the appellant for offence under Sections 324 and 336 of IPC and sentencing him to RI for one year and RI for one month respectively in Sessions Case No.294 of 1991.

2. The prosecution case, leading to the conviction of the appellant, is as follows :-

. Deceased Rajaram Bahirat was the landlord of the property situate at Bahiratwadi, Pune. Appellant-accused was one of the tenants of deceased Rajaram who was residing in the aforesaid property.

On 5th March, 1991 at about 2 p.m. appellant-accused knocked the door of the house of deceased Rajaram and was calling Rajaram, who was sleeping in his room. The door was opened by his daughter Kavita. Rajaram also hearing the call of appellant came at the door. Appellant pushed Kavita and stabbed Rajaram in his chest with a knife which he was carrying in his hand. Kavita and her brother Santosh tried to rescue Rajaram. In the process Kavita also received injury. PW 3 Chandrashekhar, who was also one of the tenants of the deceased and was residing in the vicinity of deceased Rajaram, rushed to the place of incident and tried to over power the appellant-accused. The appellant thereafter lifted the hammer lying there and threw it towards the house of Rajaram and ran away carrying the weapon in his hand. Injured Rajaram was taken to Sassoon Hospital where he was declared dead. Police were informed about the incident and, therefore, PSI Temghare, attached to Swargate Police Station went to the Sassoon Hospital. He drew inquest panchanama and sent the dead body for post mortem examination and went to Bahiratwadi and recorded the complaint of Santosh, the son of the deceased. The crime was registered and the investigation commenced.

3. During the investigation the scene of offence panchanama was drawn, clothes of the deceased were attached and seized under panchanama and statements of

other witnesses were recorded. Accused could not be traced until 15th of March, 1991 when he was arrested from Mehendi Farm. At the time of his arrest, the clothes which were on his person were attached. At the instance of the appellant-accused a blood stained knife was recovered from the compound of Bunglow No.11 of Shivaji Housing Society. The knife, clothes of the accused as well as clothes of the deceased were sent to the office of C.A. After completion of the investigation charge-sheet was filed and the case was committed to the Sessions Court.

4. Before the Sessions Court charges were framed against the appellant for offences under Sections 302, 307, 323 and 336 of IPC, to which he pleaded not guilty. On behalf of the prosecution 8 witnesses were examined. There are three eye witnesses i.e. PW 4 complainant Santosh, the son of the deceased, PW 5 Kavita, the daughter of the deceased and PW 3 Chandrashekhar, the tenant of the deceased. PW 1 Sanjay Bahirat acted as panch for the recovery of knife at the instance of the accused while PW 2 Nitin Paigude acted as panch for the recovery of hammer. PW 3 Chandrashekhar, who was an eye witness, also acted as panch for spot panchanama. PW 6 is Dr.Milind Vable, who conducted autopsy on the dead body and PW 7 is Dr. Vishnu Ubale who had examined injured Kavita and issued certificate. Lastly, PW 8 is Dattatraya

Temghare, who investigated the case and filed charge-sheet. The defence of the appellant-accused was that the deceased had sent for his mother and, therefore, he went to see the deceased. When accused went there he inquired as to why his mother was called but deceased asked him to send his mother and, therefore, accused got angry and started abusing him and, therefore, deceased started assaulting accused with knife and, therefore, there was scuffle.

5. After considering the entire evidence on record, the trial court convicted the appellant-accused for the offences under Sections 302, 324 and 336 of IPC and sentenced him to RI for life and to pay a fine of Rs.500/- in default RI for one month on the first count and RI for one year on the second count and RI for one month on the third count by the impugned judgment and order dated 15/12/1993, which is under challenge.

6. Though the appeal is on board since 11th October, 2004 and it reached for hearing in its normal course yesterday on 14th October, 2004, the advocate for the appellant has not turned up even today. In the absence of the other pair, following the ratio of the judgment of the three judge Bench of the Supreme Court in the case of Bani Singh Vs. State of U.P., **1996 Cri.L.J. 3491 (S.C.)**, we perused the entire record

including memo of appeal and heard the APP and proceeded to dispose of this appeal.

7. In order to bring home the guilt of the accused the prosecution has relied on the evidence of three eye witnesses to the incident, medical evidence and

recovery of blood stained knife at the instance of the accused and the seizure of blood stained clothes of the accused and the circumstance of the accused absconding from the date of incident till 15th March, 1991 when he was arrested from Mehendi Farm.

8. Complainant Santosh PW 4, who is the son of the deceased, has deposed that at the relevant time he was in his residential house along with his father and sister Kavita who had come there for her delivery. The appellant is one of their old tenants. The incident took place at about 2.30 p.m. when he was sleeping in the house and his sister Kavita was reading newspaper. His father Rajaram was sleeping in the adjoining room and mother had gone out. He heard knocking of their door and, therefore, he along with Kavita went to the door of their house. The door was opened by Kavita. Accused was standing outside with a big knife in his hand. He inquired about his father. PW 4 told the accused that his father was sleeping but in the meantime his father Rajaram came there from his room. As soon as his father came, accused pushed Kavita and stabbed his father with knife in his chest. Kavita tried to intervene and in the process got

injured on her waist. When PW 4 tried to intervene, accused held him by his banian near neck and pushed him, as a result of which his banian got torn. Immediately PW 3 Chandrashekhar Panchbhai came there and held the accused from his back side and pushed him and, therefore, accused fell down. Accused got up and threw hammer at them and ran away with his knife. His injured father was removed to Sancheti Hospital but he died. Therefater they took him to Sassoon Hospital. Police arrived there. His evidence is corroborated by his sister Kavita, who was examined as PW 5, in all respects. She has also stated that she received knife injury on her waist. The evidence of complainant PW 4 Santosh is also corroborated by his complaint Exh.35 which was lodged immediately after the incident.

9. Apart from the evidence of son and daughter of the deceased, there is evidence of PW 3 Chandrashekhar, who was one of the tenants of the deceased. He had returned to his house at about 2.15 p.m. and was taking rest. His house is at a distance of 20 ft. from the house of deceased. When he heard the knocking of the door of the house of the deceased, he came out. He also heard somebody inquiring about the deceased. He saw accused standing at the door of the house of the deceased holding knife in his right hand. As soon as deceased came at the door, accused pushed Kavita and assaulted the deceased on his chest with a

knife. He rushed to the place of incident and held the accused from his back side and pushed him away. Accused picked up the hammer lying there and threw towards them and thereafter ran away. Thereafter injured was taken in the Jeep to the hospital but he was declared dead. He had handed over hammer (Article 5) to the police same evening. Thus, the evidence of two eye witnesses i.e. PW 4 Santosh and PW 5 Kavita is also corroborated by PW 3 who was independent witness.

10. The evidence of the eye witnesses is also corroborated by the spot panchanama Exh.16. The blood, which was spread on the floor of the house of the deceased was collected by cotton swab and was sent to the office of C.A. and was found to have human blood. The evidence of the eye witnesses cannot be doubted that they were natural eye witnesss whose presence in the house of the deceased could not be doubted. PW 5 Kavita, though married, had come to stay at her parental house for her delivery. She herself was injured as stated by herself, her brother Santosh and PW 3 Chandrashekhar. That is also supported by the medical evidence. Prosecution has examined PW 7 Dr. Ubale to prove the injury of Kavita, who has proved injury certificate Exh.42. She had received following injury on her person:-

Incise wound over left glutues, measuring 1" x 1/2 x 1.10 th. Edges are clear cut.

. She was examined on the same day of the incident at about 4.30 p.m. The injury is said to have been caused within six hours with a sharp weapon. According to Dr.Ubale the said injury could be caused by knife (Article 8) which was recovered at the instance of the accused. Dr. Ubale has stated in his cross examination that said injury could be caused while intervening in the assault. Thus, the evidence of Kavita that she was an eye witness and had intervened to rescue her father as a result of which she herself was injured on the same date cannot be doubted.

11. As far as the deceased is concerned, the prosecution has examined PW 6 Dr. Vable, who had conducted autopsy on his dead body. He found following seven external injuries on the person of the deceased Rajaram:-

1. Stab wound on left side of chest, 1" below and 3.5% lateral to nipple, measuring 1:1/4x1/2" entering thoracic cavity, medially downwards, oblique in direction. Angles and margins are cleancut. Fluid blood oozing through the wound.

2. Incised wound left index finger at proximal interphalangeal joint, measuring 3/4x1/4" horizontal direction Margins cleancut.

3. Incised wound on posterior aspect of left index finger, 3/4" above kunckle, measuring 1/2"x1/4" horizontal direction Margins cleancut.

4. Incised wound left middle finger, 1/2" below tip an anterior aspect, measuring 1/2x1/4" oblique in direction margins cleancut.

5. Incised wound left ring finger, on anterior aspect on the tip of finger measuring 1/2x1/4" oblique in direction. Margin cleancut.

6. Abrasion 1.1/2" below right knee joint on anterior aspect, measuring 1.1/2x1/2".

7. Abrasion on left side of back at T.12 leverl, 1.1/2" laterial to midline, measuring 1.1/2x1/2".

. On internal examination he found following internal injuries corresponding to external injury no.1:-

1. Stab wound 5th intercostal space, oblique in direction 3" left lateral to costochondral junction, measuring 1.1/2x1/4" Lower border of 5th rib fractured with linear fracture 1/4" long.

2. Stab wound plura of left lung, measuring 1x3/4".

3. Stab wound of left lung, lower lobe, measuring 1x3/4"x2, passing medially downwards, left thoracic cavity contains 800 ml. fluid blood.

. According to Dr. Vable all the injuries were ante mortem and recent and external injury no.1 along with corresponding internal injuries were sufficient to cause death in ordinary course of nature. He has also opined that cause of death was due to stab injury over chest. According to him injuries on the chest and

fingers of the deceased could be caused by sharp edged weapon. He has further deposed that external injury nos.1 to 5 could be caused by the knife (Article 8) and injury nos.2,4 and 5 could be caused by one blow and injury no.3 could be caused by another blow. He has further deposed that those injuries could be caused while trying to defend himself or to avoid the blow of the weapon. He has also deposed that abrasion and incised wound could be caused due to struggle or scuffle between two persons, one of whom was having sharp edged weapon in his hand. He has categorically stated that injury no.1 could not be caused if a person was himself holding the weapon. Thus, the medical evidence fully corroborates and supports the evidence of eye witnesses and the prosecution case that deceased was assaulted with knife (Article 8) and the injury caused on his chest was caused by the said knife.

12. The prosecution case is further supported by the recovery of blood stained knife at the instance of accused. In this connection the evidence of PW 1 Sanjay Bahirat is relevant. He was one of the two panchas in whose presence the accused made statement at about 5 p.m. on 15/3/1991 on which date he was arrested, that he had kept the knife used in the incident in the compound of Bunglow No.11 of Shivaji Housing Society and would produce the same. That

memorandum statement was recorded at Exh.29. Thereafter the accused led the police and panchas to the said place and took out the knife (Article 8) from the grass of the compound. It was a rampuri knife having blade of 6 inch in length. Blood stains were noticed on it's blade by the panchas which is mentioned in the seizure panchanama Exh.30. Recovery of knife is also corroborated by Investigating Officer PSI Temghare. The said knife was sent to the office of C.A. for examination. As per C.A. report Exh.21 the knife (Article 8) was found stained with blood of group "A" as well as "B". Blood group "B" was also found as per C.A. report Exh.25 on the clothes of the deceased i.e. Banian and underwear. The blood of the deceased was found on the knife recovered at the instance of accused. Therefore, this circumstance also goes against the accused. So far as the blood of "A" group found on the knife is concerned, it must be of prosecution witness Kavita who had also received incised wound on her person. The blood of Kavita was sent in phial to the laboratory for analysis and as per C.A. report Exh.22 her blood group was found to be "A". Thus, the finding of blood of group of Kavita on the knife recovered at the instance of the accused supports the prosecution case and the evidence of Kavita as an eye witness to the assault on her father. Finding of blood of group "B" on the said knife also supports the prosecution case about the assault by the

accused on the deceased with the said knife.

13. On the date the accused was arrested, who was hiding for a period of 10 days, the clothes on his person were attached which were having blood stains and were sent to C.A. for examination. As per C.A. report Exh.21 human blood was found on the clothes of the accused i.e. full pant and half shirt, which he has not explained. As per the C.A. report Exh.23 the blood of appellant was of "O" group. Thus, the finding of unexplained human blood on the clothes of the accused which were on his person at the time of his arrest also lends support to the prosecution case, though that circumstance is not very strong circumstance.

14. It is not in dispute that accused was the tenant of the deceased and he was residing in the same property where the deceased, witnesses, including his tenant Chandrashekhar and other tenants were residing. The accused had disappeared from the date of incident and could be traced only after a period of 10 days on 15/3/1991 from Mehendi Farm situate in Janwadi area. He was traced there early morning at about 6 a.m. on 15/3/1991. Thus the unexplained disappearance of the accused from his residence for a period of 10 days from the date of the incident until he was traced in a farm also lends support to the prosecution case.

15. The prosecution has not attributed any motive to the accused. In a case like this where there are eye witnesses to the incident of assault, corroborated by the immediate complaint lodged by one of the eye witnesses and the medical evidence and further supported by the recovery of blood stained knife at the instance of accused, it is not necessary for the prosecution to prove the motive. However, from the case put up in the cross examination to the eye witnesses on behalf of the accused, the motive can be inferred. It was suggested to PW 4 complainant Santosh, the son of the deceased, that deceased had called the mother of the accused and, therefore, accused had gone to enquire from the deceased as to why he had called his mother and when deceased told him that he had called his mother and not him, the accused abused his father who came out with a knife. In the cross examination of PW 3 Chandrashekhar it was suggested that character of deceased was not good and he had an evil eye on the mother of the accused. Thus, the suggestion about the motive has come from the accused himself. This also appears in his 313 statement where he states that he got angry because deceased told him that he had called his mother and not him.

16. From the defence put up on behalf of the accused,

including his 313 statement, the case of the accused seems to be that because his mother was called by the deceased and that he had an evil eye on his mother, he got angry and started abusing the deceased and, therefore, deceased started assaulting him with a knife. Seeing that Kavita came out and held her father so that he should not assault accused. Accused also caught the hands of deceased and pushed him and, therefore, he as well as Kavita fell on the ground and thereafter he went away. The said defence is apparently devoid of any substance. Even PW 7 Dr.Vable has not accepted the suggestion that the injuries on the person of the deceased were possible when accused tried to defend himself and ward off assault allegedly made on him by the deceased. He has categorically stated in his deposition that the main injury on the chest could not have been caused to a person who was holding weapon in his hand and the injuries on the hands of the deceased were possible while trying to ward off the assault by other person on him. The medical evidence as well as other evidence on record completely negates the defence put up on behalf of the appellant-accused.

17. From the aforesaid discussion, there cannot be any doubt that the prosecution has proved the guilt of the accused beyond any shadow of doubt with the help of evidence of eye witnesses corroborated by medical

evidence and the recovery of blood stained knife at the instance of accused and his disappearance from his residence for a period of 10 days. The fact that appellant had gone at the door of the house of the deceased with a large knife (Article 8) in his hand enquiring of the deceased leaves no doubt about the mens rea on the part of the appellant-accused to assault the deceased. Moreover, the fact that the deceased was assaulted on the left side of his chest 1" below and 3.5" lateral to nipple, leaves no doubt about the intention of the appellant to cause the death of the deceased. As per the medical evidence the injury no.1 which was received on the chest of the deceased was sufficient in ordinary course of nature to cause his death. The appellant is, therefore, guilty of committing offence under Clause Firstly of Section 300 of IPC and, therefore, was rightly convicted for offence under Section 302 of IPC. He was rightly convicted for offence under Section 324 of IPC for the injury caused to Kavita PW 5. He was also rightly convicted for offence under Section 336 of IPC as the appellant-accused had thrown hammer towards the prosecution witnesses, for if it had hit any of them, it would have endangered their lives or personal safety. The act of throwing of hammer was rash and negligent which was dangerous to the life of eye witnesses. In the circumstances, no interference is at all warranted in the order of convictions and

sentences recorded against the appellant by the trial court.

18. In the result, the order of convictions and sentences recorded against the appellant-accused by the Additional Sessions Judge, Pune on 15/12/1993 in Sessions Case No.294 of 1991 is confirmed and the appeal is dismissed. The appellant-accused shall surrender to his bail bond forthwith.

(S.S. Parkar, J.)

(S.R. Sathe,J.)